FILED JULY 11, 2006

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of **RONALD S. PARKER**, **Member No. 62357**, A Member of the State Bar.	)	**Case Nos. 01-O-02667; 03-O-01180-JMR** **DECISION**

I. Introduction

Respondent Ronald S. Parker is charged in two matters with three counts of ethical misconduct involving acts of moral turpitude. After considering the evidence and the law, the court finds by clear and convincing evidence that respondent is culpable of all the counts as charged. The court recommends that an actual suspension period of one year and until restitution is paid and until compliance with standard 1.4(c)(ii) is satisfied be imposed, with the actual suspension period running *consecutive* to the suspension period recommended in State Bar Court case no. 00-O-13979, which is currently pending before the Review Department of the State Bar Court.

II. Significant Procedural History

On April 26, 2005, the Office of the Chief Trial Counsel of the State Bar (State Bar) filed and properly served a Notice of Disciplinary Charges in case numbers 01-O-02667, 01-O-03111, and 03-O-01180. On May 10, 2005, respondent filed a response denying any wrongdoing.

Then, on November 10, 2005, the State Bar filed and properly served another Notice of Disciplinary Charges in case number 04-O-13907. Respondent filed his response on December 5, 2005. On January 9, 2006, the court consolidated the four matters for all purposes.

On February 22, 2006, the parties filed a stipulation as to facts, which the court hereby approves.

On February 24, 2006, the State Bar filed three motions: (1) a motion to dismiss with prejudice case no. 01-O-03111; (2) a motion to dismiss without prejudice case no. 04-O-13907; and (3) a motion to amend the notice of disciplinary charges to conform to proof in case no. 03-O-01180, seeking to delete the first sentence of paragraph 30 on page five of the notice. On February 28, 2006, the court granted all three motions, and accordingly, case nos. 01-O-03111 and 04-O-13907 were dismissed.

The court conducted a hearing in this matter on February 28, and March 1, 2006. Anthony Garcia appeared for the State Bar. Respondent represented himself. The matter was taken under submission on March 1, 2006.

III. Factual Findings and Conclusions of Law

A. Jurisdiction

Ronald Parker (Respondent) was admitted to the practice of law in the State of California on December 20, 1974, was a member at all times pertinent to this matter, and is currently a member of the State Bar of California.

B. The Wilshire Office

Respondent moved into an office at 3660 Wilshire, Suite 838, in Los Angeles (Wilshire office) on October 16, 1999, and continued to practice there as the Law Offices of Ronald Parker until December of 2002.

The Wilshire office was formerly occupied by Stanley Clough. Clough moved into the Wilshire office at the end of 1996 to assist another attorney, Haskell Shapiro,[1] on some cases and Clough also brought some cases of his own to work on. Clough never hired any staff or had any other attorneys working for him at the Wilshire Office. Clough used Shapiro's staff for assistance. At times, Clough also received support help from K Paralegal Services, a company that was working out of the same suite of offices. Toni Parker, respondent's wife, worked for K Paralegal Services and performed support services for Clough. Respondent came by the Wilshire office to see his wife.

[1]Effective October 28, 2000, Shapiro's resignation with disciplinary charges pending was accepted by the Supreme Court. (Evid. Code § 452(d).)

Respondent met Clough during one of these office visits. They developed a social relationship and respondent went to Clough's house at least once for dinner.

By the beginning of 1998, Clough was concerned with the ways things were being run at the Wilshire office. Shapiro, the attorney that Clough was supposedly assisting, was no longer working at the office and Clough realized he was uncertain who was running the law practice. Shortly thereafter, Clough's wife was hospitalized and Clough decided she needed his attention on a full-time basis. Thus, in late May of 1998, Clough abandoned his law practice at the Wilshire office. He never physically returned to the office again. For a short period thereafter, Clough had limited telephone contact with the office, but all contact stopped by the middle of the summer. Clough failed to notify any of his clients, opposing counsel or the courts about his decision to stop practicing and to abandon his cases. Clough made no arrangements to have any of the files returned to the clients. Clough has no idea what happened to his clients or their cases.[2]

Approximately one year and five months after Clough left, respondent moved into the Wilshire office. Respondent was told that Clough had abandoned his practice and respondent was asked by the staff still working in the suite of offices if he wanted to take over any of Clough's cases. Respondent reviewed the files and decided to accept approximately 30 personal injury cases. Respondent also used the staff from K Paralegal Services, including his wife, to run his office.

C. State Bar Court Case No. 01-O-02667 - The Clough Matter

Around July 1998, Elfren and Ines Climaco employed Stanley Clough to represent them in a personal injury matter.[3] In March 1999, the Climacos hired a new attorney, Ramiro Lluis. Around January 2000, Lluis resolved the two claims for a total of $15,600. The settlement checks were made payable to the Climacos, Lluis and Clough.

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[2]Effective June 8, 2002, Clough's resignation with disciplinary charges pending was accepted by the Supreme Court. (Evid. Code § 452(d).)

[3]The parties stipulated to this fact. However, consistent with Clough's statement that he abandoned his practice in May 1998, Clough never met the Climacos and knew nothing about their case. It is unclear who from the Wilshire office handled the matter, but apparently the Climacos were falsely led to believe that they hired Stanley Clough.

After Lluis received the settlement checks he attempted to contact Clough to get his signature of the settlement checks, but was unable to reach him. Eventually, Lluis was put in contact with respondent.

On February 17, 2000, respondent sent Lluis a letter, claiming a lien for attorney fees on behalf of Clough in the Climacos' settlement proceeds. Respondent represented that his client was Clough and that Clough would settle the fee dispute for $3,120.

On March 22, 2000, respondent filed a complaint against Lluis on behalf of Clough in the Los Angeles Superior Court. Respondent brought the action on behalf of Clough as a natural person and not on behalf of a professional legal corporation or any other entity. The complaint alleged that Lluis refused to pay Clough his share of attorney fees from the settlement of the Climaco matter.

However, Clough never hired respondent to represent him to collect attorney fees in the Climaco matter or to resolve a fee dispute with Lluis. Clough never gave anyone, including respondent, authorization to assert a lien for attorney fees in the Climaco matter, to seek reimbursement for attorney fees or to file a lawsuit against Lluis.

On June 30, 2000, respondent and Lluis agreed to settle the fee dispute. Respondent gave Lluis authorization to sign Clough's name to the settlement checks. On July 11, 2000, respondent received a check for $2,300 from Lluis per the settlement agreement. The check was made payable to "Stanley D. Clough and his Attorney Ronald S. Parker." Clough's signature was put on the back of the check using a signature stamp. Respondent signed the check below the signature stamp and had the check deposited into his client trust account. On the same date, respondent signed a check drawn on this client trust account made payable to Clough in the amount of $1,300. The check was cashed, but again Clough's named was signed using a signature stamp. Respondent claims that he gave the check to someone from Clough's office to give to Clough, but he does not remember to whom he gave it.

Clough never gave anyone, including respondent, authorization to sign his name to the Climacos' settlement checks, to resolve a fee dispute, or to cash the $1,300 check. Clough never received the $1,300 check or any portion of the $2,300 settlement from the fee dispute.

Conclusion of Law - Count One - Moral Turpitude

Business and Profession Code section 6106 provides that the commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes cause for disbarment or suspension. The court finds clear and convincing evidence that respondent violated section 6106.

Respondent claims that someone from Clough's staff, either an office manager or another attorney, gave him permission to pursue the fee dispute on behalf of Clough. Respondent's testimony is unbelievable. Clough never had any staff or attorneys working for him. Clough walked into a law practice that was run by paralegals. Respondent's wife worked for Clough for a number of years and still worked in the Wilshire office when respondent moved in. Respondent knew or should have known that Clough abandoned his practice in May 1998 - almost a year and a half before he moved into the office. Likewise, respondent knew or should have known that Clough did not have any interest in a fee dispute regarding clients that Clough alleged started to represent in *July 1998*, when Clough had abandoned the office in *May 1998*. By February 2000, respondent could not honestly have believed that Clough had staff working in the Wilshire office who had authority to make decisions on behalf of a law practice that Clough had abandoned almost two years earlier.

Respondent failed to properly oversee his law practice and delegated his fiduciary duties to non-lawyers. Respondent's detachment from his practice enabled the employees from K Paralegal Services to engage in dishonesty and theft. The court finds by clear and convincing evidence that based on his gross negligence and reckless behavior respondent violated section 6106 by filing the complaint regarding the fee dispute on behalf of Clough without Clough's authorization, by permitting Clough's signature to be signed on the Climacos' settlement checks without Clough's authorization, by seeking and collecting $2,300 on behalf of Clough for services that were never performed, and by failing to account for $1,300 of the collected fees. (*In the Matter of Steele* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 708, 714.)

D. State Bar Court Case No. 03-O-01180 - The Garcia Matter

On November 9, 2001, Wendy, Maria, and Jorge Garcia employed respondent to represent them in a personal injury matter resulting from an automobile accident.[4] Wendy is Maria and Jorge's daughter. The parties agreed that respondent would receive a contingency fee of one-third of any recovery for his services.[5]

Immediately after the automobile accident, Wendy and Jorge took an ambulance to a hospital to receive medical treatment. Thereafter, someone from respondent's office referred them to Vida Medical Clinic for therapy. Respondent promised to pay the Garcias' medical bills from the money he recovered in their case. Wendy gave Diana, a secretary who worked for respondent, copies of all their medical bills. Since the medical providers were regularly sending Wendy bills, Diana told Wendy that she would contact the providers and let them know it was an ongoing litigation matter.

In May 2002, respondent settled the Garcias' case for a total of $18,500: $7,000 on behalf of Maria, $6,500 on behalf of Jorge, and $5,000 on behalf of Wendy. The three settlement drafts were deposited into respondent's client trust account at Hanmi Bank.

On June 5, 2002, the Garcias went to respondent's office to receive their share of the settlement funds. Wendy received a check for $1,466, and Jorge received a check for $1,966.[6] The Garcias were told by respondent's office that they could cash the settlement checks that day at respondent's bank, which was located in the building lobby, or they could deposit the checks into their personal bank accounts and wait ten days for the funds to clear. The Garcias decided to deposit

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[4]Respondent also represented Wendy's boyfriend, who was in the car during the accident. However, since the State Bar offered no evidence regarding respondent's representation of Wendy's boyfriend, or any possible settlement on his behalf, that representation is not addressed in this decision.

[5]At the scene of the accident, two men stopped to help the Garcias. One of the men said he worked for respondent and that the Garcias should go see him.

[6]The State Bar failed to introduce any evidence regarding the distribution of funds to Maria, and therefore, the court cannot resolve whether or not she is entitled to any additional funds.

the checks into their personal bank accounts.

On the same day, June 5, 2002, the following additional checks were issued from respondent's client trust account: check number 2842 payable to Jorge for $3,186.25, and check number 2845 payable to Wendy for $3,186.25. In the memo line on the bottom of each check was typed: "Medical Reimbursement D/A 11/9/01" (medical reimbursement checks).

Neither Wendy nor Jorge ever received the medical reimbursement checks. The checks were falsely endorsed with Wendy's and Jorge's signatures and cashed on June 5, 2002, at respondent's bank. Below Jorge's false signature, the check bears a signature for Elena Perez, a paralegal who worked for respondent. Below Wendy's false signature, the check bears a signature for Toni Parker, respondent's wife and paralegal. Neither Wendy nor Jorge ever authorized anyone to endorse or cash the checks on their behalf. Neither Wendy nor Jorge, nor anyone on their behalf, received any funds from the medical reimbursement checks. Other than their settlement checks for $1,466 and $1,966, respectively, Wendy and Jorge did not receive any other funds from respondent.

Following the distribution of the settlement funds in June 2002, Wendy continued to receive medical bills from the hospital and ambulance. Wendy tried to reach respondent to find out why the bills were not paid as respondent had promised. She drove to respondent's office and discovered that the office had been closed. Then Wendy found an address for respondent on the State Bar's website. However, when she drove to the address, she discovered it was a post office box. On March 19, 2003, Wendy sent a letter to respondent at the post office box address, asking him to pay the outstanding medical bills.

Respondent replied to Wendy's letter in writing, stating:

- I retired from law practice at the end of last year. All closed files were placed in commercial storage, with a $40.00 per file retrieval fee.
- On June 5, 2002 we issued a check to Vida Medical Clinic, paying your medical bills in full.
- In your letter you reference that ". . . *you never paid any bills that you were supposed to pay.*" However, nowhere in your letter do you tell me what bills you are referring to. Please provide me copies of these so I can research the matter further. (Exhibit B.)

Wendy received respondent's letter. However, Wendy was not concerned about the Vida

Medical Clinic bill because that provider had never sent her a bill. Ultimately, to protect her credit, Wendy negotiated payment plans with the hospital and ambulance service to pay the bills. It is unclear whether Wendy and respondent had any further communications.

Conclusion of Law - Count Three[7] - Moral Turpitude

The State Bar alleges that by failing to pay the medical reimbursement portion of the settlement that the Garcias were entitled to receive, and by falsely endorsing or by causing a false endorsement to be made on the medical reimbursement checks, respondent committed acts of dishonesty, corruption or moral turpitude in violation of section 6106.

Respondent contends that he was also a "victim" and that he had no knowledge that the funds from the reimbursement medical checks were taken. He claims that when he "researched" the issue, the funds all balanced out. The court rejects respondent's assertion that he was an innocent victim and finds that he violated section 6106 based on his gross negligence in discharging his fiduciary duties as an attorney.

As stated by the Review Department of the State Bar Court, "[w]hile moral turpitude as included in section 6106 generally requires a certain level of intent, guilty knowledge, or willfulness..., the law is clear that where an attorney's fiduciary obligations are involved, particularly trust account duties, a finding of gross negligence will support such a charge." (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 410; citation omitted.)

Although respondent claims that someone from K Paralegal Services handled the distribution of the settlement funds and that he instructed that person to pay the medical bills, respondent's fiduciary responsibilities regarding his client trust account are nondelegable. (*In the Matter of Blum, supra,* 4 Cal. State Bar Ct. Rptr. at p. 411.) The fact that respondent relied on a contract paralegal to distribute the funds, without any apparent oversight, is a serious breach of his fiduciary responsibilities. Furthermore, respondent knew or should have known that the distribution of the settlement funds in this matter was awry. The fact that both Jorge's and Wendy's medical

[7]Count Two was under case no. 01-O-03111, which has been dismissed.

reimbursement checks were for identical amounts and made payable to the clients, as opposed to the medical providers, should have alerted respondent to a problem. Notwithstanding, if before he signed the checks, respondent had familiarized himself with even the basic facts of the case (i.e, the settlement amount and his contingency fee), he would have realized that the distribution amounts were suspect. The math simply did not add up.[8]

Rather, respondent signed the checks without question and then failed to properly investigate the issue after he was contacted by Wendy. If respondent had performed even a rudimentary accounting of the funds, he would have realized that the settlement funds were not being properly distributed. The court finds clear and convincing evidence that respondent violated section 6106 based on his gross negligence in handling of client funds and his trust account, resulting in the forged endorsement of checks and the misappropriation of funds.

Count Four - Failure to Pay Client Funds Promptly

Rule 4-100(B)(4) of the Rules of Professional Conduct requires that an attorney promptly pay or deliver, as requested by the client, any funds, securities, or other properties in the possession of the member which the client is entitled to receive. Respondent wilfully violated this rule by failing to use the settlement funds to pay the medical providers as he promised or to reimburse Wendy upon her demand.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

Respondent must prove any mitigating factor by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)[9] The court finds no mitigating circumstances in this case.

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[8]Pursuant to respondent's one-third contingency fee, he was entitled to $1,666.50 of Wendy's $5,000 settlement. However, respondent signed two checks made payable to Wendy totaling $4,652.50 and leaving only $347.50 for himself. Similarly, although respondent was entitled to $2,166.45 of Jorge's $6,500 settlement, he signed two checks made payable to Jorge totaling $5,152.50 and leaving only $1,347.50.

[9]All further references to standards are to this source.

Respondent argues that he had a good faith belief that he had authority to act on behalf of Clough. (Standard 1.2(e)(ii).) Respondent's testimony on this issue is not credible. Respondent knew or should have known that Clough had abandoned his practice almost two years before respondent started to work on the fee dispute matter, and therefore, it was unreasonable to assume that anyone in the Wilshire office had authority to speak on behalf of Clough. Moreover, respondent knew Clough personally, yet he made no effort to contact Clough directly regarding the case. Respondent's wife worked in the Wilshire office the entire time and could have verified when Clough departed, i.e., before the Climacos allegedly hired Clough. There was more than sufficient evidence for respondent to be alerted to a problem in the Clough matter, yet respondent proceeded blindly without even taking the most basic precaution of talking to his client directly.

In order to establish good faith as a mitigating circumstance, an attorney must prove that his beliefs were both honestly held and reasonable. (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646.) Respondent has failed to show that his beliefs were honestly held or reasonable. Based on the totality of the circumstances, the court finds respondent has failed to establish by clear and convincing evidence that he acted in good faith.

Respondent also argues that there was an excessive delay in conducting these disciplinary proceedings, which delay is not attributable to him and prejudiced his defense. (Standard 1.2(e)(ix).) The court does not find the delay to be a mitigating factor.

As for the Clough matter, respondent contends that he has been prejudiced by the State Bar's delay in filing the charge against him because he closed his law office in December 2002 and the relevant documents, including the entire Clough file, have been lost or destroyed. As a result, respondent argues he cannot remember who gave him authority to pursue the fee dispute on behalf of Clough, but he claims that information would have been in the file he lost or destroyed.

In his pretrial statement, respondent argued that prior to the Notice of Disciplinary Charges being filed on April 26, 2005, he had no prior notice of the investigation in this matter. This statement is untrue. Respondent was contacted by the State Bar regarding his representation of Clough as early as March 15, 2001. At that point, less than a year from the date the fee dispute was

resolved, respondent was alerted to the fact that the State Bar was investigating Clough and that the settlement check from the Lluis fee dispute was at issue. By July 31, 2002, respondent's counsel was in contact with the State Bar, responding to further inquiries into the matter. After having been contacted by the State Bar on at least two occasions regarding the Clough matter prior to December 2002, respondent cannot blame the State Bar for his failure to properly maintain the relevant file when he closed his office. Under the circumstances, the court cannot find that the State Bar's delay in filing a formal notice of disciplinary charges caused any prejudice to respondent.[10]

As for the Garcia matter, the court again rejects any claim by respondent that the State Bar's delay in pursuing this matter caused him prejudice because the files in the matter were destroyed. Pursuant to rule 4-100(B)(3) of the Rules of Professional Conduct, respondent was required to maintain complete records of the distribution of the settlement funds for at least five years, including the payee and purpose of each disbursement, account balances and all bank statements and canceled checks. Since the distribution occurred in June of 2002, respondent was required to maintain these records until at least June of 2007. If respondent had maintained these records as required, he would have readily seen the inaccurate accountings performed in the Garcia matter. Nonetheless, when he was alerted to a problem in March 2003, had respondent reviewed his records he could have resolved the problem with Wendy without the State Bar involvement. Instead, it was respondent who failed to take prompt action on the matter and chose to ignore Wendy's pleas for a resolution.

B. Aggravation

There are several aggravating factors. (Standard 1.2(b).)

Respondent has two prior records of discipline. (Standard 1.2(b)(i).)

(1) On February 10, 1984, the Supreme Court filed an order in case no. 4536 (State Bar Court case no. 83-C-19), suspending respondent from the practice of law for three

[10]This is not to imply that the court condones the State Bar's practice of filing multiple, separate notices of disciplinary charges when a number of complaints are pending in its office for several years. Despite the waste of judicial resources, the court does not find that this unfortunate practice prejudiced respondent's defense.

years commencing July 30, 1982 (effective date of his interim suspension), execution stayed, and placing him on probation for three years. Respondent stipulated to violating his duties as an attorney under sections 6103, 6067 and 6068, and committing acts of moral turpitude in violation of section 6106, based on his misdemeanor conviction of attempted receipt of stolen property. The conviction stemmed from respondent's receipt of merchandise from his client (video recorders and jewelry) in payment for legal services with knowledge that the items were stolen. According to the stipulation, unbeknownst to respondent, his client was cooperating with the police in efforts to entrap respondent into the crimes of accepting stolen merchandise. Factors in mitigation included: no prior record of discipline; no prior criminal record; cooperation with law enforcement; respondent admitted his guilt and plead to the charge; evidence of respondent's excellent reputation, legal skills and integrity and remorse. No factors in aggravation were considered. Although the prior record of discipline is serious, the weight the court gives to the prior record is slightly diminished based on its remoteness in time from the current misconduct.

(2) On February 23, 2005, the Hearing Department recommended to suspend respondent from the practice of law for two years, stayed, and place him on probation for two years, including an actual suspension of one year and until restitution for his misconduct in one client matter. He failed to perform services competently, failed to promptly pay client funds, and in aggravation, ultimately misappropriated the funds. The matter is currently pending before the Review Department. (State Bar Court case no. 00-O-13979.)

However, the aggravating force of prior discipline is diminished if the misconduct in the prior discipline occurred contemporaneously with the misconduct under consideration. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619.) The misconduct in the second prior record (State Bar Court case no. 00-O-13979) occurred from 1999 to 2000 and the misconduct in the two current cases occurred from 2000 to 2001. Furthermore, the misconduct under consideration

occurred prior to the filing of the notice of disciplinary charges in the prior matter, and thus, respondent did not have the opportunity to learn from that prior record and change his behavior. Under the circumstances, the aggravating force of the second prior record is diminished.

Respondent committed multiple acts of wrongdoing, including two acts of moral turpitude and failing to promptly pay client funds in two matters. (Standard 1.2(b)(ii).)

The Garcias were significantly harmed by respondent's misconduct. Wendy was harassed by medical providers and ultimately had to pay the bills out of her own pocket to protect her credit. (Standard 1.2(b)(iv).)

At the time of trial, the Garcias still had not been reimbursed. During his closing argument, respondent finally conceded that the Garcias did not receive full payment and that he should reimburse them. However, this acknowledgment was almost four years after the funds were distributed. Respondent's refusal to take appropriate remedial action demonstrates indifference toward rectification of or atonement for the consequences of his misconduct. (Standard 1.2(b)(v).)

V. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

Respondent's misconduct involved two matters. The standards for respondent's misconduct provide for serious discipline, ranging from actual suspension to disbarment. (Standards 1.6, 1.7(b), 2.2(b), and 2.3.) In particular, standard 1.7(b) provides that if a respondent is found culpable of professional misconduct in a matter in which discipline may be imposed and the respondent has a record of two prior impositions of discipline, the degree of discipline in the current proceeding shall be disbarment unless the most compelling circumstances clearly predominate.

However, the fact that respondent has two impositions of discipline, without further analysis, may not justify disbarment. The nature and chronology of respondent's record of discipline must be examined. (*In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131.) As

stated above, where the misconduct in the current proceeding occurred before the imposition of discipline in the prior proceeding, the record of prior discipline does not carry with it as full a need for severity as if the misconduct had occurred after respondent had been disciplined and had failed to heed the import of that discipline. (*Id.*) "Since part of the rationale for considering prior discipline as having an aggravating impact is that it is indicative of a recidivist attorney's inability to conform his or her conduct to ethical norms [citation], it is therefore appropriate to consider the fact that the misconduct involved here was contemporaneous with the misconduct in the prior case." (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619.)

Here, respondent's misconduct in the Clough and Garcia matters occurred before the recommendation of discipline in February 2005. Therefore, under such circumstances, the totality of the charges brought in the first prior record of discipline is considered to determine what the discipline would have been had all the charged misconduct in this period been brought as one proceeding. Accordingly, disbarment would be too severe for respondent's wrongdoings in three matters. However, looking to the other relevant standards (2.2(b) and 2.3), and the case law, the court finds that an additional period of actual suspension is required.

Respondent argues, among other things, that his actions were reasonable and that the State Bar failed to meet its burden of proof. The State Bar argues that based on the totality of the circumstances from the prior discipline that is pending before the Review Department and the current proceeding, respondent should be actually suspended for two years and until he pays restitution.

In the prior proceeding now pending before the Review Department, the State Bar also argued that respondent should be actually suspended for two years and until he paid restitution based on his misconduct in one client matter, citing to *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468. In the prior proceeding, this court was unwilling to find moral turpitude because there was insufficient evidence regarding the nature and extent of respondent's failure to properly supervise his office. In particular, the court found that there was no evidence that respondent knew about the problems with his support staff until February 2000 - a date subsequent to most of the serious misconduct (i.e., forged signatures) in that case. However, when all three

matters are considered together (Davis, Clough and Garcia), a different picture emerges. Based on the totality of the facts, the court now finds that an aggregate two-year actual suspension is appropriate.

In *In the Matter of Rubens, supra,* 3 Cal. State Bar Ct. Rptr. 468, the attorney was found culpable of misconduct in two clients matters, including acts of moral turpitude based on his abdication of his fiduciary duties to support staff in his personal injury practice. Although the attorney's failure to properly supervise staff lasted approximately two years and involved two separate personal injury practices, the misconduct with which he was charged and which he was proved to have committed was not extensive, focusing on the two client matters. *(Id.* at p. 472.) Prior to the misconduct in the second matter, the attorney already suspected that the office was committing insurance fraud. Shortly thereafter, the attorney realized that cappers were being used, that his name was being forged on trust account checks and that misappropriations were occurring. *(Id.* at p. 477.) He took inadequate efforts to stop these abuses and instead he accepted increased payments from the staff running the office in exchange for "turning a blind eye to suspected illegal practices." (*Ibid.*) By the time of the disciplinary hearings, the attorney acknowledged that about $50,000 had been misappropriated from his trust account and that he had made no attempt to determine whose funds had been taken or to repay the funds. (*Ibid.*)

There were serious aggravating circumstances, including significant harm to the client who still had not received any portion of a $8,500 settlement; a prior record of discipline for similar misconduct; uncharged acts of misconduct; failure to take steps to halt the improper practices; and a failure to make restitution. In mitigation, the attorney was found to have cooperated with the State Bar during its investigation. The Review Department recommended that the attorney be suspended for three years, execution stayed, and he be placed on probation for three years, conditioned on an actual suspension of two years and until restitution and compliance with standard 1.4(c)(ii). (*In the Matter of Rubens, supra,* 3 Cal. State Bar Ct. Rptr. at p. 482.)

Like the attorney in *Rubens,* respondent knew of the problems with his support staff and allowed the wrongdoing to continue, resulting in the misconduct in the Clough and Garcia matters.

In particular, respondent knew by February 2000 that the staff he was using from K Paralegal Services had forged at least one document in the Davis matter. Respondent also knew that Byron Davis was asserting that he never authorized a settlement or signed a liability release in his case. Despite discovering a forgery and learning of other serious allegations of malfeasance by his staff, respondent continued to delegate his fiduciary responsibilities to K Paralegal Services, including the distribution of settlement funds. After his experience in the Davis matter, respondent should have been concerned about acting on behalf of Clough when he never talked with Clough directly about the case, especially since respondent knew Clough personally. Likewise, once respondent learned of the complaints by the Garcias, he should have taken prompt action to investigate the allegations of missing funds. As in *Rubens*, respondent failed to appreciate that he owed the highest fiduciary duty to his clients. (*In the Matter of Rubens, supra,* 3 Cal. State Bar Ct. Rptr. at p. 472.)

There are a number of cases involving attorneys who failed to control their law practice, grossly and recklessly neglected their client trust account and thereby allowed their staff to embezzle client funds. In considering the recommendation for the level of discipline, the court found instructive *In the Matter of Steele, supra,* 3 Cal. State Bar Ct. Rptr. 708, and *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411.

In *In the Matter of Steele*, supra, 3 Cal. State Bar Ct. Rptr. 708, the attorney was disbarred for misconduct including failing to control his law practice, where he let a non-lawyer take over much of his practice, sign client trust account checks and handle all financial records without proper supervision. The attorney also engaged in personal acts of moral turpitude apart from collusion with a non-attorney. (*Id*. at 724.) The attorney was found culpable of deliberately concealing material information from an insurer; deliberately misappropriating $4,623.62; and deliberately misrepresenting the amount of a settlement to a client. The Review Department found that these deliberate acts of moral turpitude and dishonesty distinguished Steele's case from other cases involving a reckless failure to supervise a law practice that did not result in disbarment. (*Ibid.*) However, unlike *Steele*, respondent's culpability has occurred more as a result of his reckless disregard for his fiduciary duties and his gross negligence. Thus, the present case does not warrant

a disbarment recommendation.

In *In the Matter of Jones, supra,* 2 Cal. State Bar Ct. Rptr. 411, a two-year actual suspension was imposed for entering into an agreement with a non-lawyer to set up a law corporation and split fees. The attorney delegated all aspects of the personal injury practice to the non-lawyer without supervision during a two-year period in which the non-lawyer handled over $2 million in client funds without even establishing a trust account, collected attorney fees without an attorney performing services and engaged in the practice of law in the attorney's name, all unbeknownst to the attorney. (*Id.* at p. 417.) However, upon discovery of the full extent of the non-lawyer's activity, the attorney reported the situation to the police and cooperated fully in the prosecution of the non-lawyer, even though he was warned that the disciplinary proceeding would ensure. Using his own funds, the attorney also paid $57,000 to medical providers who had not been paid as a result of the non-lawyer's misconduct. (*Ibid.*) The attorney also was given significant mitigating credit for his substantial, spontaneous candor and cooperation with the State Bar. (*Id.* at p. 421.)

Considering the nature and extent of respondent's misconduct, as well as all the mitigating and aggravating circumstances, the court finds the level of discipline imposed in *Jones* is most appropriate and applicable in this matter. Although the evidence of misconduct by the non-lawyer in *Jones* is more extensive, the attorney in *Jones* also took concrete steps to demonstrate remorse and recognition of his wrongdoing, including reporting the misconduct to the police and repaying $57,000 to medical providers. Conversely, despite the substantial evidence of misconduct at the Wilshire office, respondent continues to deny any wrongdoing on his part and claims that his only mistake was trusting the staff at K Paralegal Services. In light of respondent's refusal to accept responsibility for his fiduciary obligations to clients, and his failure to remedy the harm that has occurred as a result of his gross negligence, this court has no confidence that respondent fully understands and appreciates his duties as an attorney.

Thus, in viewing respondent's misconduct in the totality, the court recommends that the aggregate discipline of the prior and the current proceeding should be two years actual suspension and until restitution is paid and until compliance with standard 1.4(c)(ii) is satisfied. If respondent

desires to practice law again, he will bear the burden of demonstrating by the his rehabilitation and fitness to practice after serving two years of actual suspension and making restitution, among other things. These requirements in the context of a lengthy period of supervised probation will be sufficient to protect the public and the legal profession.

VI. Recommended Level of Discipline

State Bar Court case no. 00-O-13979 is currently pending before the Review Department of the State Bar Court. Thus, this court must make alternative recommendations of discipline based on if the pending recommendation set forth in the decision filed on February 23, 2005, in State Bar Court case no. 00-O-13979 is: (1) adopted, or (2) dismissed or modified. (Rules Proc. of State Bar, rule 216(c).)

A. Recommendation Adopted

If the Supreme Court adopts the recommendation in State Bar Court case no. 00-O-13979 that respondent be actually suspended for a period of one year and until he pays restitution to Byron Davis,

IT IS HEREBY RECOMMENDED that respondent Ronald S. Parker be suspended from the practice of law in the State of California for a period of two years, that execution of such suspension be stayed, and that respondent shall be placed on probation for a period of three years on the following conditions:

1. That respondent be actually suspended from the practice of law for one year and until he pays restitution to: (1) Ramiro Lluis, or the Client Security Fund if it has paid, in the amount of $2,300 plus simple interest thereon at the rate of 10 percent per annum from January 27, 2000, until paid and provides satisfactory proof of such restitution to the State Bar's Office of Probation;[11] (2) Wendy Garcia, or the Client Security Fund if it has paid, in the amount of $1,867.50 plus simple interest thereon at the rate of 10 percent per annum from May 29, 2002, until paid and provides satisfactory proof of such restitution to the State Bar's Office of Probation; and (3) Jorge Garcia, or the Client Security Fund if it has paid, in the amount

[11]Since Clough never performed any work on behalf of the Climacos, and respondent was never authorized to represent Clough, it would be inappropriate to allow either Clough or respondent to recover any portion of the attorney fees. Accordingly, the funds should be returned to Ramiro Lluis. *(In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 597-98.)

of $2,367.55 plus simple interest thereon at the rate of 10 percent per annum from May 29, 2002, until paid and provides satisfactory proof of such restitution to the State Bar's Office of Probation; and until respondent shows proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Conduct. This period of actual suspension is to run consecutive to the actual suspension imposed in State Bar Court case no. 00-O-13979;

2. Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;

3. Within ten (10) days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone or, if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office of the State Bar and to the State Bar's Office of Probation;

4. Respondent must submit written quarterly reports to the State Bar's Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct and all conditions of probation during the preceding calendar quarter. If the first report will cover less than thirty (30) days, that report must be submitted on the reporting due date for the next calendar quarter and will cover the extended period. In addition to all quarterly reports, respondent must submit a final report, containing the same information required by the quarterly reports. The final report must be submitted no earlier than twenty (20) days before the last day of the probation period and no later than the last day of the probation period;

5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully, any inquiries of the State Bar's Office of Probation that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with these probation conditions;

6. The period of probation will commence on the effective date of the Order of the Supreme Court imposing discipline in this proceeding. And, at the expiration of the period of this probation, if respondent has complied with all of the terms and conditions of probation, the Order of the Supreme Court suspending respondent from the practice of law for two years will be satisfied and that suspension will be terminated.

It is recommended that respondent be ordered to comply with the requirements of rule 955 of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in this matter, and file the affidavit provided for in paragraph (c) of the rule within 40 days of

the effective date of the order showing respondent's compliance with said order.

It is not recommended that respondent take and pass the Multistate Professional Responsibility Examination, or provide satisfactory proof of his attendance at a session of State Bar Ethics School, since those requirements were recommended in State Bar Court case no. 00-O-13979.

B. Recommendation Dismissed or Modified

1. If the Supreme Court dismisses the recommendation in State Bar Court case no. 00-O-13979, the recommendation set forth above under section A will be made **except** paragraph 1 will be modified to delete the last sentence that provides that the actual suspension period is consecutive;

2. If the Supreme Court modifies the recommendation in State Bar Court case no. 00-O-13979 to impose a period of actual suspension less than two years, the recommendation set forth above under section A will be made **except** paragraph 1 will be modified to provide an actual suspension period such that the aggregate discipline for both State Bar Court case no. 00-O-13979 and the current proceeding will equal two years actual suspension and until all restitution is paid and compliance with standard 1.4(c)(ii) is satisfied; or

3. If the Supreme Court modifies the recommendation in State Bar Court case no. 00-O-13979 to impose a period of actual suspension greater than two years, this court would not recommend any additional actual suspension period. Thus, the recommendation set forth above under section A will be made **except** paragraph 1 will be deleted and replaced with the following:

> "During the first year of probation, respondent must pay restitution to: (1) Ramiro Lluis, or the Client Security Fund if it has paid, in the amount of $2,300 plus simple interest thereon at the rate of 10 percent per annum from January 27, 2000, until paid; (2) Wendy Garcia, or the Client Security Fund if it has paid, in the amount of $1,867.50 plus simple interest thereon at the rate of 10 percent per annum from May 29, 2002, until paid; and (3) Jorge Garcia, or the Client Security Fund if it has paid, in the amount of $2,367.55 plus simple interest thereon at the rate of 10 percent per annum from May 29, 2002, until paid. Respondent must provide satisfactory proof of restitution to the State Bar's Office of Probation;"

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VII. Costs

It is further recommended that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10 and are enforceable both as provided for in Business and Professions Code section 6140.7 and as a money judgment.

Dated: July 11, 2006

JOANN M. REMKE
Judge of the State Bar Court